

# EXHIBIT A

**CASE SUMMARY**

CASE NO. 12-1274







LESLIE MOCK VS. CARDWORKS SERVICING, LLC  
AND CARSON SMITHFIELD, LLC§  
§  
§  
§Location: 274th District Court  
Judicial Officer: Steel, Gary L.  
Filed on: 06/29/2012**CASE INFORMATION**

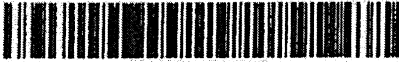
Case Type: Other Civil Cases - District

**PARTY INFORMATION**

<b>Plaintiff</b>	<b>Mock, Leslie</b>	<i>Lead Attorneys</i> <b>Kleinpeter, Amy E. Clark</b> <i>Retained</i> 512-850-5290(W)
<b>Defendant</b>	<b>CardWorks Servicing, LLC</b>	<b>Forster, B. David L.</b> <i>Retained</i> 512-305-4700(W)
	<b>Carson Smithfield, LLC</b>	<b>Forster, B. David L.</b> <i>Retained</i> 512-305-4700(W)

**DATE****EVENTS & ORDERS OF THE COURT****OTHER EVENTS AND HEARINGS**

06/29/2012	 Plaintiffs Original Petition (Open Case)
06/29/2012	 Court's Docket Sheet
06/29/2012	 Correspondence Letters
06/29/2012	Civil Case Information Sheet (TRCP 78a) <i>req via efilng</i>
07/02/2012	 Citation <i>Cardworks Servicing, LLC</i>
07/02/2012	 Citation <i>Carson Smithfield, LLC</i>
08/03/2012	 Defendant's Original Answer <i>Defendants' Plea in Abatement and, Subject Thereto, Original Answer</i>



10070012819487

12-1274

**Filed: 06/29/2012**

Other Civil Cases - Dist 274th District Court

**LESLIE MOCK VS. CARDWORKS SERVICING, LLC AND  
CARSON SMITHFIELD, LLC**

## PLAIN

**Mock, Leslie**

**Lead Attorney**

**Kleinpeter, Amy E. CI**

Defendant

**CardWorks Servicing.**  
**Carson Smithfield, LL**

**Lead Attorney**

**ANALYTICAL**

# CIVIL DOCKET

[illegible]

FILED  
12 June 29 P5:19  
Beverly Crumley  
District Clerk  
Hays District

No. 12-1274

Leslie Mock

Plaintiff

v.

CardWorks Servicing, LLC and

Carson Smithfield, LLC

Defendants

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

874<sup>TH</sup> JUDICIAL DISTRICT

HAYS COUNTY, TEXAS

Plaintiff Leslie Mock ("Ms. Mock") brings suit against Defendants CardWorks Servicing, LLC and Carson Smithfield, LLC for violations of the Telephone Consumer Protection Act ("TCPA").

### 1. PRELIMINARY MATTERS

1. Plaintiffs intend to conduct discovery under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.
2. Venue is proper in Hays County, Texas because all or a substantial part of the events or omissions occurred in Hays County. *See* Tex. Civ. Prac. & Rem. Code §15.002(a)(1).
3. Plaintiff Leslie Mock is an individual located at 510 Terrace Canyon Drive, Dripping Springs, Texas 78620.
4. Defendant CardWorks Servicing, LLC (hereinafter "CardWorks"), is a Limited Liability Corporation from New York, incorporated in Delaware, and doing business throughout the State of Texas. CardWorks can be served at their registered agent, CSC-Lawyers Incorporation Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.
5. Defendant Carson Smithfield, LLC (hereinafter Carson), is a Limited Liability Corporation from New York (same address as CardWorks), incorporated in Delaware, and doing business throughout the State of Texas. Carson can be served at their registered agent, CSC-Lawyers Incorporation Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

## **2. STATEMENT OF FACTS**

6. Neither CardWorks Servicing, LLC nor Carson Smithfield LLC ever loaned Leslie Mock money.

7. Ms. Mock never had any type of contract or agreement with CardWorks Servicing, LLC or Carson Smithfield, LLC or any other related entity.

8. CardWorks and Carson are both debt collectors registered to collect in Texas.

9. Ms. Mock has not received any written correspondence from CardWorks Servicing, LLC or Carson Smithfield LLC.

10. In 2008, Ms. Mock attempted to start a small business. Unfortunately, it was not successful and she had several debts from the business that she could not pay.

11. Ms. Mock has not provided her cell phone number to any of her creditors.

12. In or around October 24, 2011, CardWorks and Carson began to use an autodialer to call Ms. Mock's cell phone frequently through the present time. CardWorks and Carson called from 1-877-487-5583, 1-877-630-5816, and 1-877-394-5975.

13. Ms. Mock received between zero and three calls a day from October 24, 2011 through the present date.

14. Between October 24, 2011 and March 19, 2012, CardWorks and Carson called Ms. Mock forty-eight (48) times on her cell phone.

15. On March 19, 2012, Ms. Mock's attorney, Amy Clark Kleinpeter, wrote to CardWorks and requested they not contact Ms. Mock further but to direct all contact to Ms. Kleinpeter's law office. Ms. Kleinpeter faxed the request to a fax number provided when she called the Card Works Servicing number.

16. Immediately after the letter, there was a slight break in the calls, with no calls coming from March 20 through March 25, 2012.

17. However, the calls resumed on March 26, 2012. Between March 26, 2012 and May 19, 2012, CardWorks and Carson called Ms. Mock an additional forty-five times. This was despite having been notified that the number they were calling was a cell phone and Ms. Mock did not give them permission to call it. These forty-five calls were willful and knowing autodialed calls to Ms. Mock's cell phone without permission.

18. On May 19, 2012, in another effort to stop the calls to Ms. Mock's cell phone, her attorney faxed another letter to Card Works Servicing.

19. Despite receiving the faxed letter informing them that the calls to Ms. Mock's cell phone were without authorization and a request that they cease, CardWorks and Carson continued to use an autodialer to continue to call Ms. Mock's cell phone.

20. Between May 19, 2012 and June 28, 2012, CardWorks and Carson willingly and knowingly called Ms. Mock's cell another forty (40) times.

21. As this lawsuit was filed, on June 29, 2012, CardWorks and Carson continued willingly and knowingly calling Ms. Mock's cell phone without permission and in violation of the cease and desist notice.

22. At the time of filing, CardWorks and Carson had called Ms. Mock's cell phone, using an autodialer, forty-eight (48) times potentially without knowledge, followed by eighty-five (85) times willingly and with knowledge that they were calling Ms. Mock's cell phone without authorization.

23. Exhibit "A" to this petition is a call log of calls from CardWorks and Carson to Ms. Mock's cell phone as described in this petition.

#### **CLAIMS BASED ON THE ABOVE FACTS**

24. The above referenced statement of facts is incorporated by reference for the following causes of action.

##### **Cause of Action #1—Violations of the Telephone Consumer Protection Act**

25. The facts stated above demonstrate that Defendant violated the Telephone Consumer

Protection Act.

26. Defendants, and each and every one of them, and at all times material and relevant hereto, owned, operated and/or controlled "customer premises equipment" as defined by the TCA, 47 U.S.C. § 153(14), that originated, routed, and/or terminated telecommunications.

27. Defendants, and each and every one of them, and at all times material and relevant hereto, engaged in "interstate communications" as defined by the TCA, 47 U.S.C. § 153(22).

28. Defendants, and each and every one of them, and at all times material and relevant hereto, engaged in "telecommunications" as defined by the TCA, 47 U.S.C. § 153(43).

29. Defendants, and each and every one of them, and at all times material and relevant hereto, used, controlled and/or operated "wire communications" as defined by the TCA, 47 U.S.C. § 153(52), that existed as instrumentalities of interstate and intrastate commerce.

30. Defendants, and each and every one of them, and at all times material and relevant hereto, used, controlled and/or operated "automatic telephone dialing systems" as defined by the TCPA, 47 U.S.C. § 227(a)(1) and 47 C.F.R. 64.1200(f)(1).

31. The Defendants, and each and every one of them, and at all times material and relevant hereto, unfairly, unlawfully, intentionally, deceptively and fraudulently violated the TCPA, 47 U.S.C. § 227, et seq. and 47 C.F.R. 64.1200, et seq.

32. The violations of the Defendants, and each and every one of them, and at all times material and relevant hereto, include, but in no manner shall they be limited to, the following:

- a. The Defendants, and each and every one of them, and at all times material and relevant hereto, used automatic telephone dialing systems that had capacity to store or produce telephone numbers using random or sequential number generation and dialed the telephone number associated with the Plaintiff.
- b. Defendant placed automated or prerecorded messages on Plaintiff's cellular telephone voice mail, in violation of 47 U.S.C. § 227(b)(1)(A)(iii).



33. The acts and/or omissions of the Defendants, and each and every one of them, and at all times material and relevant hereto, as described in this Civil Action Complaint were done unfairly, unlawfully, intentionally, deceptively and fraudulently with the express and sole purpose of unfairly, unlawfully, intentionally, deceptively and fraudulently coercing Plaintiff to pay the alleged debt despite Plaintiff owing no obligation.

34. The acts and/or omissions of the Defendants, and each and every one of them, and at all times material and relevant hereto, as described in this Civil Action Complaint were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

35. The acts and/or omissions of the Defendants, and each and every one of them, and at all times material and relevant hereto, as described in this Civil Action Complaint were not acted or omitted pursuant to 47 C.F.R. 64.1200(f)(2) (regarding "emergency purposes"), nor 47 C.F.R. 64.1200(f)(3) (regarding "established business relationships").

36. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendants, and each and every one of them, and at all times material and relevant hereto, caused the Plaintiff to sustain damages as a result of their innumerable telephone calls that harassed, annoyed and abused Plaintiff, disturbed the peace and tranquility of her home.

37. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendants, and each and every one of them, and at all times material and relevant hereto, are liable to the Plaintiff for declaratory judgment that the Defendants' conduct violated the TCPA, and Plaintiff' actual damages, statutory damages, treble damages, and costs and attorney fees.

38. Plaintiff received over 48 telephone calls of an artificial and/or prerecorded nature entitling Plaintiff to Five Hundred Dollars and No Cents (\$500.00) for each artificial and/or prerecorded telephone call pursuant to the TCPA, 47 U.S.C. § 227(d)(3)(B), from the Defendants, and each and every one of them, in the amount of over \$24,000 for known calls (plus \$500 for each call not logged by Plaintiff and/or his phone).



39. The Defendants, and each and every one of them, caused an additional 85 more telephone calls of an artificial and/or prerecorded nature to be placed willfully and/or knowingly entitling Plaintiff to a maximum of treble damages in the amount of \$127,500 for known calls (plus \$1500 for each call not logged by Plaintiff and/or her phone) pursuant to the TCPA, 47 U.S.C. § 227(d)(3).

**JURY DEMAND**

40. Plaintiffs make demand for trial by jury and tenders the appropriate fee.

**PRAYER.**

For these reasons, Plaintiffs asks they have judgment against Defendants for the following:

- a. Award Plaintiff \$500 in statutory damages for each violation of the TCPA, pursuant to 47 U.S.C. § 227(3)(B);
- b. Award Plaintiff an amount equal to three times the statutory damages awarded under 47 U.S.C. § 227(3)(B), for Defendant's willful and knowing violations of the TCPA;
- c. Enter an Order enjoining Defendant from using an "automatic telephone dialing system" to place debt collection calls to consumers' cellular telephones without their express consent or permission;
- d. Enter an Order enjoining Defendant from placing automated or prerecorded messages on cellular telephone voice mail systems without the express consent or permission of the consumer;
- e. Prejudgment and post-judgment interest as allowed by law;
- f. Costs of suit;
- g. General relief; and

h. All other relief, in law and in equity, to which Plaintiffs may be entitled.

Respectfully submitted,



Amy E. Clark Kleinpeter  
Attorney for Plaintiffs

State of Texas Bar Number: 24043761

Hill Country Consumer Law  
12731 Research Blvd.; Bldg A, Suite 103  
Austin, TX 78759  
Phone: (512) 850-5290  
Fax: (626) 737-6030  
amyck1@gmail.com

## Mock Petition

Exhibit "A" – Autodialed calls to Lesley Mock's Cell Phone from CardWork Services

1	10/24/11 09:10am	Missed	18774875583
2	10/24/11 11:46am	Missed	18774875583
3	10/24/11 12:45pm	Missed	18774875583
4	11/03/11 12:06pm	Missed	18774875583
5	11/03/11 01:49pm	Missed	18774875583
6	11/03/11 03:09pm	Missed	18774875583
7	11/05/11 09:38am	Missed	18776305816
8	11/05/11 02:25pm	Missed	18776305816
9	11/15/11 07:09pm	Missed	18774875583
10	11/21/11 07:04pm	Missed	18776305816
11	11/23/11 06:05pm	Missed	18774875583
12	11/26/11 09:00am	Missed	18774875583
13	11/28/11 10:42am	Missed	18776305816
14	11/28/11 12:37pm	Missed	18776305816
15	11/29/11 04:49pm	Missed	18774875583
16	11/30/11 05:07pm	Missed	18774875583
17	12/05/11 07:29pm	Missed	18774875583
18	12/06/11 06:02pm	Missed	18774875583
19	12/13/11 06:01pm	Missed	18774875583
20	12/16/11 09:46am	Missed	18774875583
21	12/20/11 12:41pm	Missed	18774875583
22	12/23/11 03:55pm	Incoming	18774875583
23	12/28/11 04:27pm	Missed	18774875583
24	12/29/11 03:43pm	Missed	18774875583
25	01/09/12 12:02pm	Missed	18776305816
26	01/13/12 04:34pm	Missed	18774875583
27	01/23/12 06:28pm	Missed	18776305816
28	01/30/12 07:19pm	Missed	18776305816
29	01/31/12 01:22pm	Missed	18776305816
30	02/09/12 05:49pm	Missed	18774875583
31	02/13/12 07:52pm	Missed	18776305816
32	02/16/12 05:24pm	Missed	18774875583
33	02/18/12 02:01pm	Missed	18776305816
34	02/20/12 07:29pm	Missed	18776305816
35	02/25/12 01:19pm	Missed	18776305816
36	02/27/12 02:45pm	Missed	18774875583
37	02/28/12 07:24pm	Missed	18774875583
38	02/29/12 10:05am	Missed	18774875583
39	02/29/12 02:35pm	Missed	18774875583
40	03/01/12 04:20pm	Missed	18774875583
41	03/03/12 08:57am	Missed	18776305816
42	03/05/12 07:28pm	Missed	18774875583
43	03/06/12 09:24am	Missed	18776305816
44	03/06/12 02:33pm	Missed	18776305816
45	03/07/12 02:45pm	Missed	18774875583

## Mock Petition

Exhibit "A" – Autodialed calls to Lesley Mock's Cell Phone from CardWork Services

46	03/15/12 04:32pm	Missed	18774875583
47	03/17/12 09:52am	Missed	18776305816
48	03/19/12 01:19pm	Missed	18776305816
	03/19/12	First "Do Not Contact" Letter Faxed to Card Works Servicing	
49	03/26/12 12:17pm	Missed	18776305816
50	03/27/12 02:15pm	Missed	18776305816
51	03/27/12 06:41pm	Missed	18776305816
52	03/27/12 09:23am	Missed	18776305816
53	03/29/12 02:32pm	Missed	18774875583
54	03/31/12 01:52pm	Missed	18774875583
55	03/31/12 03:11pm	Missed	18774875583
56	03/31/12 08:55am	Missed	18774875583
57	04/02/12 11:51am	Missed	18776305816
58	04/05/12 02:23pm	Missed	18773945975
59	04/05/12 05:07pm	Missed	18773945975
60	04/07/12 01:47pm	Missed	18773945975
61	04/09/12 04:56pm	Missed	18773945975
62	04/10/12 06:31pm	Missed	18773945975
63	04/12/12 05:01pm	Missed	18773945975
64	04/12/12 12:39pm	Missed	18773945975
65	04/14/12 11:15am	Missed	18773945975
66	04/16/12 02:49pm	Missed	18773945975
67	04/16/12 12:38pm	Missed	18773945975
68	04/19/12 01:15pm	Missed	18773945975
69	04/19/12 05:36pm	Missed	18773945975
70	04/21/12 02:59pm	Missed	18773945975
71	04/23/12 04:04pm	Missed	18773945975
72	04/23/12 10:51am	Incoming	18773945975
73	04/26/12 12:35pm	Missed	18773945975
74	04/27/12 01:07pm	Missed	18773945975
75	04/27/12 03:10pm	Missed	18773945975
76	04/27/12 07:30pm	Missed	18773945975
77	04/28/12 09:07am	Missed	18773945975
78	04/30/12 02:52pm	Missed	18773945975
79	04/30/12 11:44am	Missed	18773945975
80	05/01/12 04:24pm	Missed	18773945975
81	05/03/12 01:05pm	Missed	18773945975

## Mock Petition

Exhibit "A" – Autodialed calls to Lesley Mock's Cell Phone from CardWork Services

82	05/03/12 04:29pm	Missed	18773945975
83	05/10/12 03:36pm	Missed	18773945975
84	05/10/12 12:45pm	Missed	18773945975
85	05/12/12 02:41pm	Missed	18773945975
86	05/12/12 08:44am	Missed	18773945975
87	05/14/12 03:07pm	Missed	18773945975
88	05/14/12 11:43am	Missed	18773945975
89	05/17/12 02:19pm	Missed	18773945975
90	05/17/12 05:04pm	Missed	18773945975
91	05/17/12 12:47pm	Missed	18773945975
92	05/19/12 02:12pm	Missed	18773945975
93	05/19/12 03:23pm	Missed	18773945975
	05/19/2012	Second "Do Not Contact" Letter Faxed to Card Works Servicing	
94	05/21/12 01:55pm	Missed	18773945975
95	05/21/12 04:45pm	Missed	18773945975
96	05/21/12 08:37am	Missed	18773945975
97	05/24/12 02:13pm	Missed	18773945975
98	05/24/12 12:21pm	Missed	18773945975
99	05/29/12 05:04pm	Missed	18773945975
100	05/29/12 11:36am	Missed	18773945975
101	05/30/12 01:13pm	Missed	18773945975
102	05/30/12 11:32am	Missed	18773945975
103	05/31/12 02:58pm	Missed	18773945975
104	05/31/12 05:12pm	Missed	18773945975
105	05/31/12 12:33pm	Missed	18773945975
106	06/02/12 03:04pm	Missed	18773945975
107	06/02/12 09:28am	Missed	18773945975
108	06/04/12 11:28am	Missed	18773945975
109	06/05/12 06:57pm	Missed	18773945975
110	06/07/12 01:48pm	Missed	18773945975
111	06/07/12 03:26pm	Missed	18773945975
112	06/07/12 05:33pm	Missed	18773945975
113	06/09/12 02:20pm	Missed	18773945975
114	06/09/12 08:35am	Missed	18773945975
115	06/12/12 08:45am	Missed	18773945975
116	06/12/12 11:36am	Missed	18773945975
117	06/13/12 05:45pm	Missed	18773945975



## Mock Petition

Exhibit "A" – Autodialed calls to Lesley Mock's Cell Phone from CardWork Services

118	06/13/12 07:12pm	Missed	18773945975
119	06/14/12 02:42pm	Missed	18773945975
120	06/14/12 04:23pm	Missed	18773945975
121	06/14/12 12:54pm	Missed	18773945975
122	06/15/12 11:23am	Missed	18773945975
123	06/16/12 02:35pm	Missed	18773945975
124	06/16/12 08:30am	Missed	18773945975
125	06/18/12 02:53pm	Missed	18773945975
126	06/18/12 08:12am	Missed	18773945975
127	06/18/12 12:10pm	Missed	18773945975
128	06/21/12 02:09pm	Missed	18773945975
129	06/21/12 04:24pm	Missed	18773945975
130	06/23/12 09:44am	Missed	18773945975
131	06/28/12 02:41pm	Missed	18773945975
132	06/28/12 04:38pm	Missed	18773945975
133	06/28/12 06:49pm	Incoming	18773945975

CITATION  
THE STATE OF TEXAS

CAUSE NO. 12-1274

STYLED: LESLIE MOCK VS. CARDWORKS SERVICING, LLC AND CARSON SMITHFIELD, LLC

TO: CARDWORKS SERVICING, LLC, REGISTERED AGENT CSC-LAWYERS INCORPORATION SERVICE  
COMPANY 211 E 7TH ST, SUITE 620 AUSTIN TX 78701

**NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 am on the Monday next following the expiration of 20 day after the date you were served this citation and petition, a default judgment may be taken against you."**

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION, which was filed by the PLAINTIFF, in the above styled and numbered cause on the **29TH DAY OF JUNE, 2012**, in the 274th District Court of Hays County, San Marcos, Texas.

Issued and given under my hand and seal of said Court at San Marcos, Texas on this the 2nd day of July, 2012.

REQUESTED BY:

Amy E. Clark Kleinpeter  
Hill Country Consumer Law  
12731 Research Blvd Bldg A Suite 103  
Austin TX 78759  
512-850-5290

BEVERLY CRUMLEY  
Hays County District Clerk  
Hays County Government Center  
712 Stagecoach Trail, Ste. 2211  
San Marcos, Texas 78666

**COPY**

OFFICER'S RETURN

Came to hand on the \_\_\_ day of \_\_\_\_\_ 20\_\_\_ at \_\_\_ o'clock \_\_\_ M and executed the \_\_\_ day of  
\_\_\_\_\_ 20\_\_\_ by delivering to defendant \_\_\_\_\_ in person, a true copy of this  
citation with a copy of the petition attached thereto on \_\_\_ day of \_\_\_\_\_ 20\_\_\_ at \_\_\_ o'clock  
\_\_\_ M at \_\_\_\_\_ in \_\_\_\_\_ County, Texas.

[ ] Not executed. The diligence used in finding defendant being \_\_\_\_\_

[ ] Information received as to the whereabouts of defendant being \_\_\_\_\_

Service Fee: \$ \_\_\_\_\_

Sworn to and subscribed before me this the  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SHERIFF/CONSTABLE/AUTHORIZED PERSON

BY: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Server

\_\_\_\_\_  
NOTARY PUBLIC, THE STATE OF TEXAS

\_\_\_\_\_  
County, Texas

ORIGINAL FOR RETURN



CITATION  
THE STATE OF TEXAS

CAUSE NO. 12-1274

STYLED: LESLIE MOCK VS. CARDWORKS SERVICING, LLC AND CARSON SMITHFIELD, LLC

TO: CARSON SMITHFIELD, LLC, REGISTERED AGENT CSC-LAWYERS INCORPORATION SERVICE  
COMPANY 211 E 7TH ST SUITE 620 AUSTIN TX 78701

**NOTICE TO DEFENDANT:** "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 am on the Monday next following the expiration of 20 day after the date you were served this citation and petition, a default judgment may be taken against you."

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION, which was filed by the PLAINTIFF, in the above styled and numbered cause on the 29TH DAY OF JUNE, 2012, in the 274th District Court of Hays County, San Marcos, Texas.

Issued and given under my hand and seal of said Court at San Marcos, Texas on this the 2nd day of July, 2012.

REQUESTED BY:  
Amy E. Clark Kleinpeter  
Hill Country Consumer Law  
12731 Research Blvd Bldg A Suite 103  
Austin TX 78759  
512-850-5290

BEVERLY CRUMLEY  
Hays County District Clerk  
Hays County Government Center  
712 Stagecoach Tr

**COPY**

OFFICER'S RETURN

Came to hand on the \_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_ o'clock \_\_\_ M at \_\_\_\_\_ executed the \_\_\_ day of \_\_\_\_\_ 20\_\_ by delivering to defendant \_\_\_\_\_ in person, a true copy of this citation with a copy of the petition attached thereto on \_\_\_ day of \_\_\_\_\_ 20\_\_ at \_\_\_ o'clock \_\_\_ M at \_\_\_\_\_ in \_\_\_\_\_ County, Texas.

[ ] Not executed. The diligence used in finding defendant being \_\_\_\_\_

[ ] Information received as to the whereabouts of defendant being \_\_\_\_\_

Service Fee:\$ \_\_\_\_\_

Sworn to and subscribed before me this the  
\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SHERIFF/CONSTABLE/AUTHORIZED PERSON  
BY: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Server

\_\_\_\_\_  
NOTARY PUBLIC, THE STATE OF TEXAS

\_\_\_\_\_  
County, Texas

ORIGINAL FOR RETURN

Cause No. 12-1274 ☐ P.O. Filed

IMMO

IIO

EX PARTE.

Vs.

Amount: \$ \_\_\_\_\_ ☐ Paid ☐ Billed ☐ Paupers

## ISSUANCE AND SERVICE

☐ Constable 1 2 3 4 5 ☐ Private☒ Citation ☐ Posting ☐ Publication ☐ Attachment(s)☐ TRO☐ Temporary Injunction☐ Notice☐ Execution☐ Sequestration☐ Order of Sale☐ Garnishment☐ Attachment☐ Other 7/2/12☐ Abstract of Judgmentemail - Citations Ready for Phys

## OTHER INSTRUCTIONS

☐ Hold for: Order Copy Bond Mone  
☐ Add Involved Parties  
☐ Other

## PICK UP / DELIVERY / SPECIAL INSTRUCTIONS

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FILED  
12 August 10 A9:40  
Beverly Crumby  
District Clerk  
Hays District

CAUSE NO. 12-1274

LESLIE MOCK,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	HAYS COUNTY, TEXAS
CARDWORKS SERVICING, LLC AND	§	
CARSON SMITHFIELD, LLC,	§	
	§	
<i>Defendants.</i>	§	274TH JUDICIAL DISTRICT

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**DEFENDANTS' PLEA IN ABATEMENT AND, SUBJECT THERETO,  
ORIGINAL ANSWER**

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COME NOW, Defendants CardWorks Servicing, LLC, and Carson Smithfield, LLC, (collectively, "Defendants"), and file this their Plea in Abatement and, subject thereto, Original Answer to Plaintiff's Original Petition (the "Petition"), respectfully showing the Court as follows:

**I.  
PLEA IN ABATEMENT**

Plaintiff filed this lawsuit against Defendants on claims arising out of the terms, obligations, and rights under an Advanta Business Card Agreement (the "Agreement"). (A true and correct copy of the Agreement is attached hereto as Exhibit A). Because these allegations must be arbitrated pursuant to the Agreement, the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and the Texas Arbitration Act, TEX. CIV. PRAC. & REM. CODE §§ 171.001-171.098, Defendants file this Plea in Abatement.

Defendants seek to abate the present proceedings on grounds that the dispute is governed by an arbitration agreement. Plaintiff entered into the Agreement, which contained an arbitration clause in connection with the extension of credit. (*See* Exhibit A.) The present dispute is within the

scope of this arbitration agreement. Therefore, Defendants request that this Court abate all proceedings in this matter, including discovery, until such time as arbitration has occurred as required by the arbitration agreement.

## **II. GENERAL DENIAL**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny each and every, all and singular, the allegations set forth in the Petition and demand strict proof thereof.

## **III. AFFIRMATIVE AND OTHER DEFENSES**

Plaintiff fails to state a claim upon which relief can be granted.

Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands, laches, and/or estoppel (in all its forms).

Plaintiff's claims are barred in whole or in part by the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code and applicable Texas law.

Plaintiff's claims are barred in whole or in part by her failure to mitigate his damages, if any.

Plaintiff's claims are barred in whole or in part by the terms of the contract governing her account.

Plaintiff's claims are barred in whole or in part because they are subject to an arbitration agreement.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that upon final hearing hereof, judgment be rendered that Plaintiff take nothing by her suit and that Defendants be granted all relief, general and special, to which they may be justly entitled.

Respectfully submitted,

LOCKE LORD LLP

/s/ B. David L. Foster by permission M.H.D.

B. David L. Foster  
State Bar No. 24031555  
100 Congress Avenue, Suite 300  
Austin, Texas 78701  
512-305-4700 (Telephone)  
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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on this the 10th day of August, 2012, on the following counsel of record, via certified mail, return receipt requested:

Amy E. Clark Kleinpeter  
Hill Country Consumer Law  
12731 Research Blvd.; Bldg A, Suite 103  
Austin, TX 78759  
512-850-5290  
626-737-6030 (Facsimile)  
*Attorney for Plaintiff*

/s/ B. David L. Foster by permission M.H.D.  
Counsel for Defendants

# EXHIBIT A



## ADVANTA BUSINESS CARD AGREEMENT

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3. **FOREIGN CURRENCY AND INTERNATIONAL TRANSACTIONS.** Account transactions made in currencies other than US Dollars will be converted to US Dollars under the first issue membership regulations and procedures in effect at the time the transaction is processed. These regulations and procedures, currently pending, will be necessary to ensure that the transaction can be used to settle (a) a withdrawal application and (b) a government-mandated fee in effect on the currency processing date or on the previous day. The currency conversion rate is subject to the processing date and the "from" rate in effect on the transaction date or posting date. We may change, for example, a separate addendum to our charter, with such variations.

**4. CARD AND CONVENIENCE CHECK ASSURANCE** We may cancel your account to use the Card and Convenience Checks at any time for any reason without notice. You remain obligated under this Agreement even if you stop using any of our Cards, Convenience Checks and/or credit advance facilities when we request that you discontinue use of any such facilities. Convenience Checks and credit advances issued by us shall be honored. Convenience Checks paid by us are not, however, to you, if we discontinue the Convenience Check for any reason, we may assign any Convenience Check and/or fee to you.

If we offer you the opportunity to design your Card with a business name, design and/or logo, you will warrant and represent that you, as the lawful owner or licensee or user of any such name, design and/or logo, will warrant and represent that you will defend, protect and hold us harmless from any claim arising out of the use of such name, design and/or logo in connection with your Card or your Account.

S. LAMBERT: "Knowns List" refers to 20% of the following items remaining unpaid on the account at any given time as follows: Balance Forward, Current Credits, Cash Advances and other transactions plus any late charges, etc., less a credit for the past 60 days' credits and payments. The System is designed to give each

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It is not possible to determine the exact date when the items were received, but it is likely that they were received sometime between 1945 and 1947.

[illegible]

30. **SPECIAL PROGRAMS:** We may offer Special Programs (such as a promotional interest rate or fee waiver on certain transactions, or a reduced interest program) under the Account. Special Programs are subject to the terms and restrictions outlined in the Account Opening Agreement. Special Programs are available to you at our discretion and are not available to all customers. Special Programs are available through the providers of Special Programs and are not a part of this Agreement. Special Programs are subject to the terms and restrictions of the applicable Special Program. Special Programs may change, and use of the Account after any change constitutes your agreement to these features and rules. If there is any ongoing or one-time fee, premium or charge associated with a Special Program you apply for, accept or use, you authorize us to post such charges to the account. A Special Program involves any rebate, reward, benefit, premium, prize or other means of value to you, and may be subject to any laws which may be assessed and that you should be aware of. Special Programs may be subject to any such laws. Normal Account fees, interest charges and other terms apply to any Special Program unless otherwise stated in the particular features or rules applicable to such Special Program.

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32. **SEVERABILITY:** Each provision in this Agreement shall be interpreted so as to be effective and valid to the maximum extent possible under applicable law. If any provision is found to be invalid under applicable law, the remaining provisions will continue to be effective, except as provided in Section 36.

33. ADDING AND DELETING CHARGESMEN AND DELEGATES: We may permit the addition of new chargesmen and delegates to the Accoutrements during the Spring Session. If we do so, all references in this Agreement to the Accoutrements shall be deemed to include the Accoutrements as amended. We may also permit a proposed Chargesman to be added to the Accoutrements without the consent of the Chargesmen. In return for the proposed Chargesman's consent to be added to the Accoutrements, we may require the proposed Chargesman to execute a Certificate of Assent and Waiver of Rights, and we may require the proposed Chargesman to execute an Assent and Waiver of Rights. We may also permit a proposed Delegate to be added to the Accoutrements without the consent of the Delegates. In return for the proposed Delegate's consent to be added to the Accoutrements, we may require the proposed Delegate to execute a Certificate of Assent and Waiver of Rights, and we may require the proposed Delegate to execute an Assent and Waiver of Rights. We may also permit a proposed Delegate to be added to the Accoutrements without the consent of the Delegates. In return for the proposed Delegate's consent to be added to the Accoutrements, we may require the proposed Delegate to execute a Certificate of Assent and Waiver of Rights, and we may require the proposed Delegate to execute an Assent and Waiver of Rights. We may also permit a proposed Delegate to be added to the Accoutrements without the consent of the Delegates. In return for the proposed Delegate's consent to be added to the Accoutrements, we may require the proposed Delegate to execute a Certificate of Assent and Waiver of Rights, and we may require the proposed Delegate to execute an Assent and Waiver of Rights.

34. **CARD REMAINS OUR PROPERTY:** "We understand that each Card issued pursuant to our program and we reserve your right to recall it at any time. We can do this with or without cause and with or without giving you any notice. If your Card is recalled or expires you must promptly return it upon our request, if the Business or any of its agents or persons whom you requested credit or with whom you intended to use the Card after the expiration date fail to surrender the recalled or expired Card, you must do so. You may not use the Card after its expiration or expiration date, or after its employment or other connection with the Business has been discontinued or after the Business causes it to end or to operate in a going concern."

**3. ANTI-MONITORING DISCLOSURE.** By applying to credit with us or using your Account, you agree that a review of any kind (including monitoring) of the information stored in or to of the residence in use of this Agreement or the use of the Account, either your own or any other, is necessary to ensure that you do not engage in prohibited activities, including, but not limited to, the use of the Account to engage in prohibited activities. If the information stored in or to of the residence in use of this Agreement or the use of the Account is used for any purpose other than the purpose for which it was provided, you agree to notify us immediately. If you do not notify us immediately, we may, at our sole discretion, take any action that we deem appropriate, including, but not limited to, the suspension or termination of your Account, the seizure of your Account, the disclosure of your Account information to law enforcement, and the prosecution of you for any violation of the law. We reserve the right to monitor the use of the Account at any time and for any purpose, including, but not limited to, the purpose of ensuring that you do not engage in prohibited activities. We reserve the right to disclose any information that we obtain from the Account to law enforcement, and we reserve the right to prosecute you for any violation of the law. We reserve the right to take any action that we deem appropriate, including, but not limited to, the suspension or termination of your Account, the seizure of your Account, and the disclosure of your Account information to law enforcement. We reserve the right to use any information that we obtain from the Account for any purpose, including, but not limited to, the purpose of ensuring that you do not engage in prohibited activities. We reserve the right to disclose any information that we obtain from the Account to law enforcement, and we reserve the right to prosecute you for any violation of the law. We reserve the right to take any action that we deem appropriate, including, but not limited to, the suspension or termination of your Account, the seizure of your Account, and the disclosure of your Account information to law enforcement. We reserve the right to use any information that we obtain from the Account for any purpose, including, but not limited to, the purpose of ensuring that you do not engage in prohibited activities.

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services and not against us. You agree that, regardless of any Merchant Claims, you remain liable to us under this Agreement without any exception and that we are not responsible for any Merchant Claims.

16. **RETENTION OF DRAFTS:** You agree that you will retain a copy of the draft or other document evidencing all transactions you make and that the absence of such a draft or document, or the absence of your signature, does not release you from liability for an amount properly charged on the Account.

**17. COLLECTION CONTACT:** If you do not pay on the Account as agreed or are otherwise in default, you grant as permission to contact you anywhere including, among other things, at your home and place of business. You agree that except as provided for, all calls are made during business hours. We may contact you by mail, email, or text message.

Account by any means including, among other things, by telephone, cellular phone, cellular text message, e-mail, instant message, fax, internet, US mail, courier delivery, and personal visit, and that we may so communicate or leave messages with you, your agents, employees, representatives and others mentioned in the Business, and on answering machines or voice mail. You grant us permission to make calls that are electronically dated and that play a recorded message.

18. ACCOUNT USE AFTER TERMINATION: Use of the Account after notice of revocation is fraudulent and may subject you to civil liability and prosecution.

**18. CANCELLATION:** The Spring Institute can cancel the Account by delivering to us written or oral notice that you wish to do so. Upon cancellation, you agree that you will not use the Account for any purpose, and you will surrender delivery of Quota and related documents to us.

and you are principally responsible for the Account, you agree to indemnify and hold the Accountant harmless from and against all claims, damages, costs and expenses, including reasonable attorneys' fees, that the Accountant may incur or be obligated to pay as a result of the Accountant's performance of its duties under this Agreement, and you agree to pay the Accountant's reasonable attorneys' fees in connection with this Agreement. The Accountant's liability to you shall be limited to the amount of fees paid to the Accountant under this Agreement.

**20. ADDRESSES - NOTICES - ACTIONS:** You must keep us informed of your current address and contact information. If you move, you must promptly notify us of your new address and telephone number. You agree that we may conclusively presume that we have given any required notice to you if we mail it to you at the most recent address shown on our records. Notices regarding the Account can be given to any Cardmember and be effective as to all Cardmembers, and any action taken or agreement made by any Cardmember shall bind all Cardmembers.

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21. **ASSIGNMENT:** We may, at any time, and without notice to you, sell, assign or transfer any sums due on a Account, this Agreement, or our rights or obligations under the Account or this Agreement to any person or entity. You may not assign or attempt to assign the Account or any of your rights or obligations under this Agreement unless we expressly consent to and permit such assignment. If we do, you are any successor or assignee will comply with our requirements and procedures for doing so.

24. **STOPPING CONVENIENCE CHECK PAYMENTS:** Due to the nature of Convenience Checks, we cannot always effectively stop payment on them. We may attempt to do so in response to a request from you or for other reasons and we may choose not to attempt to do so. We are not responsible for any loss or damage resulting from our failure to stop payment on a Convenience Check.

25. AUTHORIZATIONS: We reserve the right to limit, from time to time and without notice, the amount available for any account transaction. We are not responsible for any refusal by an ATM, merchant, financial institution or other person to honor your Card or Convenience Checks.

26. AUTOMATIC TELLER MACHINE CASH ADVANCES: Cash Advances may not exceed the lesser of the total ATM limit (if any), \$750 per day, or the portion of your Credit Limit we authorize is available for Cash Advances. A receipt from an ATM may not indicate that the transaction was conducted with a Card. Withdrawal from an ATM made with the Card will be processed by us as a Cash Advance.

**27. TERMINATION OF ATM PRIVILEGES:** We may terminate or block the use of any Card at any ATM, at our discretion, whenever we reasonably believe there is unusual activity on the Card or the Account or if you are in default under this Agreement.

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7. FEES AND CHARGES: See Supplement containing additional Terms on fees and charges.  
8. FINANCE CHARGES:  
A. ACCOUNT APRS - See Supplement containing additional Terms on finance charges.

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**BALANCE COMPUTATION METHOD:** We calculate the Average Daily Balance of each account component (e.g., cash transactions, cash transactions, provisions, balances) separately. Each day we start with the previous day's ending balance. We add any new transactions or debits, including applicable transaction fees, and subtract any payments or fees. We calculate finance charges by multiplying this sum by the daily periodic rate, and then add the finance charges to the sum. This gives us the new ending balance. At the end of the billing cycle, we add cash balances as sum, we subtract any new transactions or debits, including applicable transaction fees, and calculate the new ending balance as sum. This gives us the Average Daily Balance for each account component.

"Billing cycle" is the period of time, approximately 30 days, during which transactions, charges and credits accumulate and for which a periodic billing statement is issued. The Billing Cycle Closing Date is the last day of the billing cycle and will vary from month to month. A billing cycle for a particular calendar month is the cycle which has its Billing Cycle Closing Date in that month. For example, the "January billing cycle" is the billing cycle with its Billing Cycle Closing Date in January.

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ANY AMENDMENT OR CHANGE IN TERMS. WE MAY CHANGE THE TERMS OF THIS AGREEMENT, INCLUDING BY ADDING NEW FEES, CHARGES, INTEREST OR OTHER RATES AND FEES, AND ADDING NEW PROVISIONS, UPON FIVE (5) DAYS' NOTICE TO BOTH THE CUSTOMER AND THE BANK. ANY CHANGED RATE, FEE, OR ACCOUNT TERM SHALL BE APPLICABLE TO ALL NEW TRANSACTIONS, EXCEPT AS PROHIBITED BY APPLICABLE LAW, AND WE MAY MAKE ANY CHANGE IF YOU KEEP OR USE THE CARD OR ACCOUNT AFTER THE EFFECTIVE DATE OF THE CHANGE. IF YOU DO NOT AGREE WITH ANY CHANGE, YOU MAY STOP USING THE CARD OR ACCOUNT. WE MAY STOP YOUR ACCOUNT TO NEW TRANSACTIONS.

**BEARING STATEMENTS AND ERRORS.** We send a periodic bearing statement to the Business section of the *Syracuse Post-Standard* at the address shown in our records, but we have no obligation to send multiple or duplicate statements. We may send periodic bearing statements electronically. We may send a periodic statement for any thing other to which we are not bound by contract or balance of more than 21, or no transactions or changes. You agree to notify us if you do not receive a statement. You must notify us in writing of any statement being or other errors within 60 days of the date the statement was issued. If you do not, you agree, and we will consider that the statement is correct for all purposes.

**TERMINATION OF ACCOUNT AND REDUCTION OF CREDIT:** We may suspend, close or otherwise terminate the line of credit and/or reduce the Credit Limit at any time for any reason, regardless of whether you are in default under this Agreement. Your obligations, including your payment obligations, under this Agreement continue even after we do this. Your Account remains subject to any amendment made to this Agreement.

**MERCHANT CLAIMS:** You agree to assert all defenses, complaints, rights and claims ("Merchant Claims") which they have relating to goods or services purchased with the Account only against the merchant selling those goods or

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We can accept late or partial payments, as well as payments that are marked "payment in full" or with other dispositive endorsements, without taking any of our rights under this Agreement or being bound by any such endorsements. We are not bound by any endorsement provided you make, whether or not it accompanies any such endorsement, and whether or not it contradicts or purports to amend any provision of this Agreement, unless we have specifically and affirmatively agreed to be bound by it. A writing signed by our authorized officer or representative, indicating our acceptance of such late or partial payments, and any amendments or amendments thereto, must be attached to the document for such indication to be effective.

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We are not required to accept any payment in an amount which exceeds your outstanding Account balance or which will produce a Credit Account balance. If we accept such a payment or generate a credit Account balance, your Credit Account will not be increased by the amount of that overpayment or credit balance, and we are not required to make any other adjustments to your account. We may, at our discretion, apply any such overpayment or credit balance to deposits or preauthorized payments for amounts in excess of the Credit limit, or to treat that overpayment of credit balance as a deposit or "Interest-bearing loan," or to cause a reversal of any portion of that overpayment of credit balance in response to your express request that we do so if otherwise is provided by applicable law when doing so will be consistent with principles of good and sound banking.

YOU ACKNOWLEDGE THAT PAYING LESS THAN THE REQUIRED MINIMUM PAYMENT OR PAYING LATER THAN YOUR  
DATE MAY RESULT IN NEGATIVE AMORTIZATION OF YOUR ACCOUNT BALANCE.

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## SUPPLEMENT TO YOUR ADVANTA BUSINESS CARD AGREEMENT

KEEP THIS IMPORTANT SUPPLEMENT. IT CONTAINS ACCOUNT TERMS, WHICH ARE INCORPORATED AS SECTIONS 7 AND 8.A OF YOUR ADVANTA BUSINESS CARD AGREEMENT.

## 7. FEES AND CHARGES:

- A. There is NO ANNUAL FEE for this Account.
- B. RETURNED PAYMENT FEE - If a payment is returned to us unpaid or dishonored for any reason, we charge the Account \$35 for each such return or dishonor.
- C. DISHONORED CONVENIENCE CHECK FEE - If a Convenience Check is presented when the Account is closed or not in good standing, or if we refuse to pay a Convenience Check because it was obtained from a source other than us, or because paying it would cause the Account balance to exceed your assigned Cash Advance Credit Limit or your Account Credit Limit, or for any other reason, we charge the Account \$35.
- D. LATE PAYMENT FEE - If we do not receive at least the minimum periodic payment in the manner and by the time of day on the Payment Due Date specified in your periodic billing statement, we charge the Account a late fee. The late fee is \$19 on balances under \$250 and \$39 on balances of \$250 and over, all based on the Account balance as of the day after your Payment Due Date.
- E. DOCUMENT FEE - If we provide a copy of any periodic billing statement, sales draft, Convenience Check, payment check or other document at your request (except in connection with a billing error inquiry or dispute), we charge the Account these fees: (i) Statement Copy - \$1 (ii) Other Document Copy - \$5 (iii) Research - \$15 per hour if extensive investigation is required.
- F. OVERLIMIT FEE - If your Account balance exceeds your assigned Credit Limit at any time during a billing cycle, we charge the Account an overlimit fee. The overlimit fee is \$15 on balances under \$501, \$29 on balances between \$501 and \$1001, and \$39 on balances over \$1001, all based on the Account balance at the Billing Cycle Closing Date.
- G. CASH ADVANCE AND CONVENIENCE CHECK TRANSACTION FEES - We normally charge the Account 3% (minimum \$5) of each Cash Advance (including Convenience Checks) used, but you may be offered Cash Advances with different fees and/or with other minimum or maximum fees.
- H. MISCELLANEOUS CHARGES - You agree to pay any other amount incident to the application and for the opening, administration, and termination of the Account, including (without limitation) taxes, charges or fees and any penalties or interest thereon imposed on this Agreement or on any transaction made pursuant to this Agreement or on the Account, whether imposed by us or by others such as taxing authorities. We may advance any such tax, charge or fee and any penalty or interest thereon for you and charge that amount to the Account, and we will specifically disclose any such charge or fee that is imposed by us.
- I. BALANCE TRANSFER FEE - We normally charge the Account 3% (minimum \$5) of each Balance Transfer request we process. However, you may be offered introductory or promotional Balance Transfers with lower (or waived) fees and/or with other minimum and/or maximum fee limits.
- J. CONVENIENCE CHECK STOP PAYMENT AND BALANCE TRANSFER CANCELLATION FEES - If you or any person to whom a Convenience Check is payable ask us to stop payment on that Convenience Check, or if you ask us to cancel or change the terms of a Balance Transfer that we have undertaken at your request, we charge the Account \$29 for each such attempt we make (whether or not the attempt proves successful).
- K. WIRE PAYMENT FEE - If any payment on the Account is made in the form of a bank wire, we charge the Account \$15.
- L. FOREIGN TRANSACTION FEE - We charge the Account 3% of the US Dollar amount of any Account transaction made outside the US and/or in a currency other than US Dollars.
- M. FINANCE CHARGES ON FEES AND CHARGES - The fees and charges in Paragraphs 7-A to 7-F and 7-H to 7-K, and any Paragraph 7-L Foreign Transaction fees applied to purchase transactions, are treated as Purchases, and applicable finance charges accrue on such fees and charges from the date incurred, subject to the grace period for new Purchases described in Paragraph 8. The fees and charges in Paragraph 7-G, and any Paragraph 7-L Foreign Transaction fees applied to cash transactions, are treated as Cash Advances, and applicable finance charges accrue on such fees and charges from the date incurred until paid in full. In addition, any fees and charges may be treated as finance charges when assessed, may affect the disclosed periodic and annual percentage rates for the billing cycles in which they are assessed, and may be subject to any minimums applicable to Account finance charges.

## 8. FINANCE CHARGES:

A. Account APRS - The Account Annual Percentage Rate ("APR") on Purchases (including Purchase transactions, unpaid Purchase finance charges and Purchase-related fees and charges) and on Balance Transfers (including Balance Transfer transactions, unpaid Balance Transfer finance charges and Balance Transfer-related fees and charges) is 9.99%. The Account APR on Cash Advances (including Cash Advance transactions, unpaid Cash Advance finance charges, and Cash Advance-related fees and charges) is the Variable Rate Index (explained below) plus 25.99%. The Variable Rate Index for any billing cycle is chosen by us from among the Prime Rates

published in The Wall Street Journal's "Money Rates" section during the three (3) months prior to the month which contains that billing cycle's Billing Cycle Closing Date. The minimum Variable Rate Index used on your Account is 4.00%. (Note: That published Prime Rate is merely a pricing index. It is not necessarily, and should not be deemed by you to represent, the lowest or "best" interest rate available from us or any other lender at any particular time.) Your account may be eligible for promotional offers from time to time. In such cases, the APRs and other terms of the promotional offer(s) apply so long as you make all payments when due, do not go over your credit limit, and your Account remains open and in good standing.

Notwithstanding the rate calculations described above, if you default under this Agreement, we may increase each Account APR and/or any introductory or promotional APR to a Default APR without giving you additional notice. The Default APR may be up to the higher of the Account APR plus 3%, or the Variable Rate Index plus a Default Margin of up to 28.99%. We may also incrementally increase the Default APR upon subsequent defaults until the Default APR reaches the higher of these two components.